

REMARKS/ARGUMENTS

Claims 1-32, 40, and 47-64 were previously canceled. Claims 33, 35, and 65 are amended; claim 36 is currently canceled; claim 66 is new; and claims 33-35, 37-39, 41-46, 65, and 66 are pending upon entry of the Amendment. No new matter is introduced by way of the Amendment. Support for the Amendment can be found, for example, in paragraphs [0034], [0036], and by Fig. 1.

Claim Rejections – 35 USC §102:

Claims 33-35, 37-39, 41-42, and 65 are rejected under 35 USC §102(b) as being anticipated by DE 19823515 to Badin. Applicant respectfully traverses the rejection.

It is applicant's understanding that the rejection is essentially based upon an interpretation of the Badin reference where element 8 anticipates the claimed base part, elements 2 and 3 anticipate the claimed middle part, and element 4 anticipates the claimed upper part. This interpretation is incorrect, because the noted elements of Badin do not possess the structure of the claims.

The mold of Badin is structurally configured to include a centering and closing element 8, a base part consisting of two laterally movable parts 2, 3 and an upper part 4 guiding a central pressing stamp 5. These parts are shown in the single figure of Badin.

For Badin, it is important that a hollow space of the mold is, in principle, essentially defined by the complex inner contour of base parts 2, 3. The hollow space is closed on the lower end by a centering element 8 and on the upper side by the pressing stamp 5. The upper part 4 guiding the pressing stamp clearly does not define the complex inner contour of the hollow space.

In contrast to Badin, the claimed mold includes a base part having a cut-out corresponding to a first part length of a stopper, the base part having a cut-out which is bounded at the base side by a plunger having an ejection function and whose end face is smaller than the base surface of the cut-out. Claim 1 now recites that the contour defining portion of the base part is made in one part - contrary to the split base mold of Badin - and also has centering function.

In Badin the base part consists of two parts 2, 3 with element 8 closing the hollow space and having centering function. Element 8 is not a plunger and does not have an ejection function. Thus, it follows that Badin does not disclose the use of a middle part made of two part elements.

Badin shows an upper part with a central pressing stamp, but the upper part surrounding the pressing stamp does not close the hollow space. Badin's upper part does not read on the claimed pressing stamp, which closes the hollow space of the base part and forms a tolerance compensating recess in the stopper.

It is important for the invention that the upper part forms a planar surface surrounding said tolerance compensating recess on the head part because the outer dimensions of a produced glass stopper must be very exact and smooth. This feature is obtained by the claimed multi-part mold in which the middle part and the upper part - and not only the press stamp - define the outer contour of the stopper in substantial manner.

Further, the amended claims are in no way obvious in view of the cited prior art, especially considering that the prior art does not disclose a mold in which the hollow space is defined not only by a base part closed at the lower end by a closing member at the upper end by a pressing stamp, but in addition by a middle part consisting of two part elements and an upper part not only guiding the press stamp but also closing the hollow space and by using a one-piece base part cooperating with an ejecting plunger.

Clearly, if the base element 8 of Badin were modified to include a plunger, along with elements 2 and 3 being modified into one piece, then Badin's mold would be rendered unsatisfactory for its intended purpose, which is to produce the shown swing-top cap used commonly in conjunction with bottling beer. The shown pins 9, 10 provide a passage for a wire to pass through the upper cylindrical portion for connection to a lock mechanism.

Badin's stopper is clearly unusable with the claimed one part mold, as it would be impossible to remove the stopper without destroying the mold. Thus, applicant submits that one of ordinary skill in the art would recognize that the mold of Badin is structurally tailored for a type of stopper which inherently requires a different mold construction than claimed. This is

evident because this artisan knows that the structural requirements of the stopper define the mold, and not *vice versa*. Accordingly, the artisan would pass over Badin, because modifications to Badin's mold would essentially require the entire mold to be scrapped and redesigned. Thus, the differences between Badin's mold and the claimed subject matter are much too great for the artisan to view the claimed invention as an obvious derivation.

For at least the reasons cited above, claims 33 and 65, and all claims dependent therefrom, are not anticipated by, or obvious in view of, Badin.

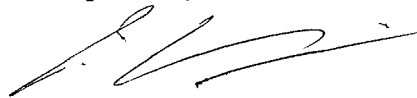
Claims 36, and 43-46 were rejected under 35 USC 103(a) as being obvious over Badin as applied to various references. Applicant respectfully disagrees. However, since these claims ultimately derive patentability from claim 33, this argument will not be expounded upon only for the sake of brevity.

CONCLUSION

In view of the foregoing, applicant believes all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at (415) 576-0200.

Respectfully submitted,



Christopher L. Willink
Reg. No. 62,135

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834
Tel: (415) 576-0200
Fax: (415) 576-0300
CLW:jhw
63000749 v1